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JUL 11 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 11, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 95-185: Ex Parte Notice

Dear Mr. Caton:

On July 11, 1996, the attached letter was sent to Ms. Karen Brinkmann, Associate Chief of the Wireless Telecommunications Bureau. Pursuant to Section 1.1206 of the Commission's Rules, two copies of this ex parte notice and the attached letter are being filed with your office.

Should there be any questions regarding this matter, please contact the undersigned.

Sincerely yours,

John T. Scott, III

John T. Scott, III

cc: Ms. Karen Brinkmann
Mr. Daniel Grosh
Mr. Zenji Nakazawa
Mr. David Nall
Ms. Kathryn O'Brian
Mr. Walter Strack

John T. Scott, III
ATB:GCE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Ms. Karen Brinkmann
Associate Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Re: CC Docket No. 95-185 (LEC-CMRS Interconnection)

Dear Ms. Brinkmann:

This letter responds to a question raised by Bureau staff at the June 24, 1996 ex parte meeting with representatives of Bell Atlantic NYNEX Mobile, Inc., concerning the scope of the State of Connecticut's regulation of competitive local exchange carriers ("CLECs").

Telecommunications regulation in Connecticut is the responsibility of the Connecticut Department of Public Utility Control ("DPUC"). As BANM's March 4, 1996, Comments in this proceeding explained, the DPUC has prevented BANM and all other commercial mobile radio service ("CMRS") carriers from entering into voluntary mutual compensation arrangements with the state's predominant local exchange carrier, the Southern New England Telephone Company. In its September 1995 Order (which was supplied to the Commission in BANM's ex parte notice of the June 24 meeting), the DPUC prohibited a CMRS carrier from obtaining any compensation (let alone mutual and reciprocal compensation), unless and until the CMRS carrier is certificated as a CLEC.

The attached letter from BANM's regulatory counsel in Connecticut details the numerous obligations imposed on CLECs, which CMRS providers must meet before they can seek mutual compensation. Those obligations go well beyond informational filings. They include:

-- Mandatory submission of tariffs, which must include rates. Such tariffs do not take effect until a 14-day notice period expires. The DPUC has the right to suspend any tariff and to require that modifications be made. This would violate the Commission's recent preemption of the DPUC's attempt to continue rate regulation of cellular carriers.

-- Application for and grant of a "Certificate of Public Convenience and Necessity" (CPCN). The attached letter identifies the fourteen items (including proposed tariffs) that at a minimum must be included in such an application. The DPUC has determined that it must hold a hearing on any CPCN application. That hearing process grants third parties the right to oppose the application, and includes discovery and cross-examination of the applicant's witnesses. Such entry regulation of CMRS has been preempted.

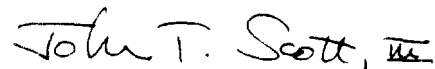
-- Compliance with DPUC-imposed technical requirements, including mandatory offering of certain capabilities such as presubscribed access. These requirements violate the Commission's longstanding preemption of state-imposed technical standards for CMRS providers as well as other Commission actions (e.g., its recent order declaring that CMRS providers need not offer such access).

-- Obligations to serve all consumers in specific geographic areas within Connecticut (which do not match FCC-defined MSAs and RSAs).

These CLEC requirements, if imposed on CMRS carriers, would not only violate Congress's action in 1993 (codified in Section 332 of the Communications Act) specifically preempting state rate and entry regulation of CMRS, but would also violate the Commission's own assertion of primacy over regulation of CMRS carriers dating back to the creation of the cellular service in 1981.

BANM demonstrated in its Comments in this proceeding (at 19-22) why the DPUC's attempt to impose CLEC regulation on CMRS providers in Connecticut should be preempted. Other carriers agree. See, e.g., Comments of AT&T Corp. at 26-27, Paging Network, Inc. at 17 n. 24, and Nextel Communications, Inc. at 11 n. 24; ex parte letter of CTIA, June 28, 1996, at 3-4. BANM urges that the Commission explicitly address and preempt the DPUC's unlawful attempt to impose CLEC regulation on CMRS carriers, as part of its decision in this rulemaking.

Sincerely yours,



John T. Scott, III

cc: Ms. Karen Brinkmann
Mr. Daniel Grosh
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Mr. Walter Strack

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July 8, 1996

John I. Scott III, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595

Re: Connecticut Competitive/Certified Local Exchange Carriers

Dear John:

You have asked me to detail the regulatory requirements to which certified/competitive local exchange carriers ("CLECs") are subject in the State of Connecticut. The following is a quick overview of these requirements.

I. Tariff Filing Requirements

Each company authorized to provide competitive local exchange service must file a tariff with the Department of Public Utility Control ("DPUC" or "Department"), and is subject to the provisions of C.G.S. §16-247f for any subsequent tariff changes. Under §16-247f(e), a tariff for a competitive service shall be effective on 14 days written notice to the Department. A proposed tariff filing for a competitive service must include (1) rates and charges, which may consist of a maximum rate and a minimum rate; (2) applicable terms and conditions; (3) a statement of how the tariff will benefit the public interest; and (4) any additional information required by the DPUC.

If the Department approves a tariff which consists of a minimum rate and a maximum rate, the CLEC may amend its rates upon 5 days' written notice to the Department and any notice to customers which the Department may require, provided the amended rates are not greater than the approved maximum rate and not less than the approved minimum rate. Conn. Gen. Stat. §16-247f(e). In addition, the Department retains the authority to suspend the effective date of any tariff.

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As I indicated during our recent telephone conversation, a situation currently involving LCI International illustrates some of the problems and limitations associated with the required tariff filings and tariff changes. On June 18, 1996 the DPUC issued a letter to LCI relative to proposed tariff revisions filed by LCI on April 12, 1996. According to the Department's letter, on May 7, 1996 the Department informed LCI that additional information concerning the company's proposed filing was required before it would place the proposed tariff changes into effect. The DPUC indicated that since as of the date of its June 18 correspondence LCI had not responded to the DPUC's letter, LCI was in violation of the Department's directive and ordered LCI to respond to certain DPUC questions no later than June 28, 1996. Should LCI fail to respond by that date, the Department has indicated that it will initiate a proceeding requiring LCI to show cause why its CPCN should not be revoked.

II. Certification Requirements

In Docket No. 94-07-03, DPUC Review Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity, the Connecticut Department of Public Utility Control ("DPUC" or "Department") established the following minimum requirements that must be included in any application for a certificate of public convenience and necessity ("CPCN") to provide competitive local exchange service in Connecticut:

- Complete name, address and telephone number of the applicant and its agent for service;
- The state and date of incorporation;
- Documentation of registration in Connecticut as a foreign corporation, if applicable, and a sworn statement of intent to pay any required corporate or sales taxes;
- A company contact for regulatory and legal matters;
- A copy of the company's annual report, annual return or a summary financial statement which must include Securities and Exchange Commission ("SEC") filings such as 10-K/10-Q

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and 8-K filings, and audited financial statements and annual reports;

- A brief description of the services sought to be provided and the geographic area for which authority to serve is sought;
- A general description of the proposed facilities, if any, of others to be used in the provision of the service;
- The applicant's customer service plan, addressing deposits, complaint procedures, office hours, termination policies and late payment charge policies;
- A description concerning the actions taken by the applicant to insure that new customers affirmatively select the applicant, confirming paperwork and a description of sales' agents training and supervision;
- Information regarding the status of the company's operations in other states, including a list of each state in which the applicant currently provides and/or is authorized to provide service and a list of any jurisdiction in which the company's application was denied or in which any negative action is pending;
- An affidavit listing any sanctions or fines imposed by other jurisdictions;
- Proposed tariffs;
- An exhibit demonstrating the applicant's technical qualifications; and
- For facilities-based providers, a one-year capital/construction plan.

Decision, Docket No. 94-07-03 at 19-20.

In its decision, the Department stressed that the aforementioned represent the minimum requirements, and that it retained the right to modify such at anytime in the future.

In its decision in Docket No. 94-07-03, the DPUC concluded that C.G.S. §16-247g(a), as amended by Public Act 94-83, requires

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the Department to hold a hearing on any CPCN application after notice is given to all interested parties. The Department also has the right to issue interrogatories as it deems necessary to clarify information contained in the CPCN application. An applicant for a CPCN must submit its prepared statement in advance of the scheduled hearing. Opponents of the CPCN application must file any objection in writing no later than fifteen days after submission of the full CPCN application. In cases where there is no objection to the application and the applicant's filing is complete, the hearing may be held telephonically. However, in cases where there is a substantive objection, the applicant must make its witnesses available for cross-examination. Although the DPUC's decision contemplated action either approving or denying a CPCN within 60 days of its filing absent objection, experience has shown that the decision-making process can extend far beyond this period. Indeed, I am aware of at least one application pending before the Department that despite having been filed in July 1995, has yet to be acted upon by the Department.

III. Post-Certification Requirements

(a) Technical Requirements

In its decision in Docket No. 94-07-01, The Vision for Connecticut's Telecommunication Infrastructure, the DPUC determined that a CLEC must offer nondiscriminatory interconnection to its network in order to promote interconnectivity and interoperability. Furthermore, in Docket No. 94-07-07, DPUC Investigation of Local Service Options, Including Basic Telecommunications Service Policy Issues and the Definition and Components of Basic Telecommunications Service, the Department held that a CLEC must offer a "basic" telecommunications services option. The DPUC has concluded that, at a minimum, "basic" telecommunications services provided by a CLEC must include the following capabilities and qualities:

- Provision of a single party, voice-grade access line with an associated 7-digit identification number;
- Touch-Tone equivalent calling and Automatic Number Identification Capability;

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- Automatic access to the first switching point in the users presubscribed carrier's system;
- The ability to receive without additional charge any call irrespective of the network on which the call originates;
- Presubscribed access to a preferred intrastate long-distance carrier and a preferred interstate long-distance carrier;
- Dial access to emergency services under generally accepted dialing protocols (e.g., 911 and 0);
- Dial access to telecommunications assistance services (e.g., 411 and Operator);
- Dial access to statewide telephone relay services;
- White pages (alpha) directory listing;
- Privacy protections (e.g., *67 and Per-Line Blocking);
- Compliance with explicit and implicit service standards; and
- A usage element, either flat rate or measured, for the local exchange service by the NXX prefix of the provider.

Decision, Docket No. 94-07-07 at 23.

(b) Obligation to Serve All in the Authorized Area

In Docket No. 94-07-03, the Department concluded that each CLEC authorized to provide service is obligated to serve any and all consumers seeking service from the provider in its authorized areas of operation. In recognizing that some multi-exchange market groupings may be more economically attractive than others, the DPUC has split the state into eleven "Labor Market Areas", and has split the eleven groupings further into two classifications: Group A consisting of three multi-exchange market groupings that might be deemed less desirable than others;

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John I. Scott III, Esq.
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and Group B, consisting of those eight multi-exchange market groupings perceived as more desirable. If a telecommunications company seeks to provide service in a Group B multi-exchange market grouping, that company must also provide service in a Group A multi-exchange market grouping. Furthermore, in order for a company to meet its obligations, the company must provide ubiquitous service to all customers seeking service from a provider within the market area within three years of the date of certification. This obligation may be satisfied with owned facilities, resold facilities or a mix of both.

(c) Filing Requirements

The DPUC's decision in 94-07-03 also established the following informational filings and service standards with which all CLECs must comply post-certification:

- File with the Department a current listing of rates and charges for all certified services;
- File with the Department annual reports on its Connecticut operations within 60 days of the close of its fiscal year. Such annual reports shall describe the status of the Company's Connecticut operations and shall include at a minimum the following information: (a) the number of customers for each certified service; (b) a description of physical changes in or additions to existing facilities expected for the next fiscal year and any changed uses of those facilities; and (c) any changes in the information which was filed with the Department with the certification proceeding;
- Copies of any 10-K or other filings made with the Securities and Exchange Commission; and on an annual basis, copies of the company's annual report, annual return or a summary financial statement.

Decision, Docket No. 94-07-03 at 29-30.

Furthermore, pursuant to C.G.S. §16-247e and the DPUC's decisions in Docket Nos. 94-07-08 and 94-07-09, CLECs are subject to an assessment to fund the state's lifeline and universal service programs. The assessment is imposed on

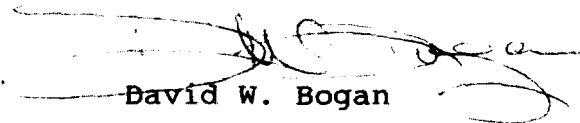
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each carrier on the basis of that carrier's percentage of gross intrastate revenues. In addition, pursuant to C.G.S. §16-49 each CLEC having more than \$100,000.00 of gross revenues in a calendar year is susceptible to an assessment to fund the operation of the DPUC. As you may know, wireless providers are not currently subject to the DPUC assessment requirement, and have appealed the DPUC's decisions holding that wireless carriers are subject to assessment for lifeline and universal service funding.

As always, please do not hesitate to contact me should you have any questions or care to discuss any aspect of this correspondence.

Very truly yours,



David W. Bogan

DWB:jpb